

# DIRECTIVE

## WORKFORCE INVESTMENT ACT

Number: WIAD06-21

Date: June 29, 2007

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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: WORKFORCE TRAINING ACT (SB 293) IMPLEMENTATION  
GUIDANCE

### EXECUTIVE SUMMARY:

#### Purpose:

Workforce Investment Act (WIA) Directive [WIAD06-17](#), dated March 20, 2007, notified the workforce development community of changes in WIA-funded activities required by amendments to the California Unemployment Insurance (UI) Code. Following issuance of that directive, California Workforce Investment Board (State Board) and Employment Development Department staff worked with representatives of the local workforce investment community to develop implementation guidance. The purpose of this directive is to provide guidance for implementing those areas of the new UI Code requirements that were identified as impacting Local Workforce Investment Boards (Local Board). Other directives providing additional guidance on the implementation of the requirements of SB 293 or its influence in local planning will be issued upon development.

#### Scope:

This directive applies to all Local Boards.

#### Effective Date:

This directive is effective on the date of issuance.

### REFERENCES:

- Senate Bill (SB) 293 (Ducheny), Chapter 630, Statutes of 2006
- UI Code 14000 – 14500
- WIA 117(b)(2) and (d), 121(b)(1), and 134(c)(2)(A) and (d)(4)(A)(iii)
- Title 20 of the Code of Federal Regulations (20 CFR) 660.300, 661.305, 661.315, 662.100(c), 662.200, 662.210(c), 662.250, 663.310(c), 663.420, and Preamble pages 49294, 49295, 49307, 49309, and 49310

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## STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by bold italic type.

## FILING INSTRUCTIONS:

This directive finalizes WIA Draft Directive WIADD-143, issued for comment on June 1, 2007. The Workforce Services Division received no comments during the draft comment period. Retain this directive until further notice.

## BACKGROUND:

SB 293 amended the California UI Code to repeal Division 8, Family Economic Security: Job Preparation and Training Services, and to amend Division 7, California Workforce Investment Act, by replacing Section 14000 and adding Sections 14005 - 14530. These changes to the UI code provide guidance and new requirements for carrying out WIA-funded programs.

## POLICY AND PROCEDURES:

### Local Board Membership

Requirement: UI Code 14202 describes the mandatory composition of Local Boards. Most of this section reiterates federal law with some minor changes; however, Section 14202(c) constitutes a significant change. It provides for ***“Representatives of labor organizations nominated by local labor federations, including a representative of an apprenticeship program. At least 15 percent of local board members shall be representatives of labor organizations unless the local labor federation fails to nominate enough members. If this occurs, then at least 10 percent of the local board members shall be representatives of labor organizations.”*** [Cf. WIA 117(b) (2) and 20 CFR 661.315.]

Definitions: For the purposes of carrying out this requirement, the following definitions provide clarification for the language in UI Code 14202(c).

- The term labor federation means an alliance of two or more organized labor unions for the purpose of mutual support and action [Cf. 20 CFR 660.300]. Some Local Workforce Investment Areas (Local Area) may share jurisdiction with more than one labor federation, and conversely, some labor federations may share jurisdiction with more than one Local Area. At the regional or local level, labor federations may be known also as central labor councils.

Because they typically (although not always) represent all unions in a geographic area, labor federations may represent workers in very diverse industries such as construction, manufacturing, health care, education, transportation, and hospitality. Some labor federations may be narrower in scope, depending on the industries and labor force in the area covered.

For example, representing a very broad range of workers, the American Federation of Labor and Congress of Industrial Organizations, commonly known as the AFL-CIO, is the largest and best-known labor federation in the U.S. In California, there are 24 AFL-CIO central labor councils chartered by the California Labor Federation AFL-CIO. Contact information is online at [www.calaborfed.org/about/clc.html](http://www.calaborfed.org/about/clc.html).

- The phrase *nominated by local labor federations* indicates that nominations must be submitted by at least one local labor federation, but not necessarily by multiple local labor federations, even if there are multiple local labor federations within the local board's jurisdiction. Appointment to a Local Board is ultimately at the discretion of the local Chief Elected Official (CEO), though appointments must be drawn from these nominations.
- The phrase *unless the local labor federation fails to nominate enough members* indicates a reference to the quantity of nominations, the quality of those nominations, or both.
  - For example, if a local CEO needs to appoint six labor representatives to the Local Board in order to meet the 15-percent requirement, but receives only five nominations after having made a good faith effort to solicit them, the CEO has met the condition allowing for the lower 10-percent threshold.
  - Similarly, if that same CEO has established reasonable qualifying criteria applicable to all of its Local Board members (e.g., to be a member one must be available to attend the board's monthly meetings), and the CEO receives ten nominations, but only five of those individuals satisfy the qualifying criteria (e.g., five are unavailable to attend the board meetings), then again, the CEO has met the condition allowing for the 10-percent threshold.

The process for soliciting nominations from labor federations should be an open nomination process and instituted at any time that a Local Board is not meeting the 15-percent requirement. Local labor federations retain the opportunity to forward nominations for appointment to available seats vacated through attrition and/or non-compliance with reasonable and universally applied requirements for board service.

Procedure: If and when a Local Board does not meet the 15-percent requirement, the local CEO should re-solicit nominations until the 15-percent requirement is met. The CEO should document the good faith efforts made to meet this requirement (e.g., copies of letters of outreach to local labor federations and copies of their written responses).

In soliciting and accepting nominations from labor federations, local CEOs should keep in mind which representatives would best serve the industries and occupations that are key to the local economy and/or experiencing high levels of growth. CEOs also should be aware that there may be some local unions or other labor organizations that are not a part of the local labor federation. Local business leaders and economic development agencies may be able to assist the CEO in identifying those labor unions that may want

to consider, and should be considered for Local Board membership. The CEO can help such entities work with a labor federation in order to obtain a nomination from that labor federation, as required under the new State law and existing federal law.

When a labor federation nominates an individual for Local Board membership, the CEO is not obligated to accept that individual as a member and can work with the labor federation on additional or alternative nominations. The CEO should have a policy or procedure in place (such as Local Board by-laws) that ensures that the selection criteria are fair, reasonable, applied to all Local Board nominees and members, and are in the best interests of the area served by the Local Board.

There are two alternatives that can be considered if a Local Board does not currently have the 15 percent labor representation required under SB 293. It should be noted that in addition to the new 15 percent labor requirement, the Local Board must still maintain a business majority representation on the board as well.

For example, if a Local Board had 40 members comprising 21 business representatives, 2 labor representatives, and 17 representatives of the remaining public-sector partners, only 5 percent of the board would represent labor. Adding 6 more labor representatives would meet the 15 percent labor requirement, though an additional 5 business representatives would need to be added to maintain the business majority. As a result, the size of the board would dramatically increase by 11 members from 40 to 51. It should be noted, as well, that local unions can assist in identifying potential recruits from the business community, although those nominations must be provided by local business organizations and business trade associations.

Alternatively, if the board needs to achieve the 15 percent labor representation, but wishes to maintain the same original number of members, it may choose to reduce the public-sector representation. For example, it may need to add 4 new labor representatives to the original 40 member board, but reduce by 4 the number of remaining public-sector members, if some of the remaining public-sector members could represent both their own programs and those represented by the members removed. The result would meet the labor requirement while maintaining the business majority and the original total number of board members.

### **One-Stop Operators**

**Requirement:** UI Code 14206 describes local board functions, and Section 14206(d) specifically requires the board to ***“Select one-stop operators, with the agreement of the local chief elected official, annually review their operations, and terminate for cause the eligibility of such operators.”*** [Cf. WIA 117(d)(2)(A) and (d)(4); and 20 CFR 661.305(a)(2).]

**Procedure:** The Local Board must ensure that it has some mechanism in place that would allow it to terminate for cause an agreement with a One-Stop operator. The Local Board should review its written agreements with its One-Stop operators to determine whether those agreements already contain language that allows for the annual review of their operations and for termination for cause by the Local Board. If

they do not, the Local Board should amend those agreements or implement other action that would ensure that the Local Board will review operations annually and terminate for cause any One-Stop operator agreement.

### **Individual Training Accounts**

**Requirement:** UI Code 14206(h) requires the Local Board to ***“Develop local policy on the amount and duration of individual training accounts based on market rate for local training programs.”*** [Cf. 20 CFR 663.420.]

**Procedure:** The Local Board’s policy on the amount and duration of individual training accounts should be established in writing. In addition to explaining how local market rate is determined and used, the policy may describe any other factors that are taken into consideration and how those factors affect the final decision on individual training accounts. Examples of other factors are the labor pool needs of key industries and high-growth occupations and the Local Area’s need for health-care workers or workers with other specific skills.

### **Training Services for Job Seekers**

**Requirement:** UI Code 14230(a)(5) states that training services shall be made available to individuals who, among other criteria, ***“have selected a program of services directly linked to occupations in demand in the local or regional area.”*** [Cf. WIA 134(d)(4)(A)(iii) and 20 CFR 663.310(c).]

**Procedure:** This amendment to the UI Code does not contradict or supersede the intent of WIA 134(d)(4)(A)(iii) or 20 CFR 663.310(c). Specifically, although Local Boards may focus on training and related services pertaining to demand occupations within that geographic area, WIA funds still may be used for training and related services for occupations located outside the Local Area but in an area to which the job seeker is willing to relocate.

### **Local Memorandum of Understandings**

**Requirement:** U.I. Code 14230 describes the services that must be available through California’s One-Stop Career Centers. Among those services are training services which must be ***“made available to individuals who have met the requirements for intensive services and who are unable to obtain or retain employment through intensive services.”*** Additionally, ***“Each local board shall develop a policy for identifying individuals who, because of their skills or experience, should be referred immediately to training services. This policy, along with the methods for referral of individuals between the one-stop operators and the one-stop partners for appropriate services and activities, shall be contained in the memorandum of understanding between the local board and the one-stop partners.”***

**Procedure:** Local Boards should modify their existing MOUs with the One-Stop partners as necessary in order to include the referral policy and methods as described in this new U.I. Code provision. Both the WIA (Section 134 and 20 CFR 663) and the

U.I. Code describe the three tiers of service available to adults and dislocated workers and the requirements for an eligible participant to move from core services, through intensive services, and into training services.

Many practitioners and policymakers across the nation originally interpreted three-tiered services as a “work first” program – that a participant would have to look for work for a period of time and demonstrate that he/she was unable to find employment before moving up to the next service tier. This was a misinterpretation of the law, however, and California’s own Workforce Investment Act Eligibility and Technical Assistance Guide addresses the issue on page 6 of 60, which reads, in part:

*“Local areas cannot adopt a “work first” approach in developing local procedures and eligibility criteria for the three tiers of service. The adult and dislocated worker programs are not “work first” programs. Locally developed procedures and criteria must be designed to provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities [WIA Section 195]. The appropriate mix and duration of services should be based on each participant’s unique needs.*

*Participants may receive the three levels of service concurrently and the determination that an individual needs intensive and/or training services can be made without regard to how long the individual has been receiving core or intensive services. Neither is it necessary for all individuals to receive staff-assisted core services before receiving intensive services. In addition, job search is not the only core service that satisfies the federal requirement that an individual must receive at least one core service before receiving intensive services. Such decisions are based on each participant’s employment and training needs.”*

Most, if not all Local Boards, have already developed policies of some kind on how to serve participants based on their employment and training needs, rather than the work first philosophy. These policies may already be contained in the MOUs with One-Stop partners, and address a partner’s methods for referring someone immediately into training services.

Those MOUs that do not include such a provision will require modification to include the policy for immediately referring certain individuals into training services, and the methods for referring individuals between the local One-Stop Career Centers and partners. The policy may only apply to select partners or it may apply to all partners collectively, in addition to referrals within the One-Stops themselves. For instance, a local County Welfare Department (CWD) may provide legitimate core services such as assessment and job referral to TANF recipients, but then wish to refer those recipients who desire training to the One-Stop for training services. The Local Board may then develop and negotiate a policy specifically for accepting immediate referrals to training from the CWD and include it in the MOU with the CWD.

## **ACTION:**

Please bring this directive to the attention of all relevant parties.

**INQUIRIES:**

If you have any questions, please contact your Regional Advisor at (916) 654-7799.

/S/ BOB HERMSMEIER  
Chief  
Workforce Services Division